

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
SAWMILL WOODS, SECTION I THROUGH V.

This Declaration (hereinafter referred to as “the Declaration” or “this Declaration”), made this 22 day of May 1984, by Sawmill Woods Development Corp., an Indiana corporation (hereinafter referred to as “Declarant”),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate in Allen County, State of Indiana, which includes Sawmill Woods, Section III which will ultimately be subdivided into a residential community for approximately 256 dwelling units and with open spaces for the benefit of such residential community, all to be included and known as Sawmill Woods by various numerical sections; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities therein contained, and to this end, Declarant desires to subject all of the real estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of all of the real estate and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located on all of the real estate, administering and enforcing the covenants and restrictions contained in this Declaration, collection and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of all of the real estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of Sawmill Woods Homeowners Association, Inc., as such agency for the purpose of exercising such functions, and will cause the Common Properties to be conveyed to said Corporation before the conveyance of the first Dwelling Unit to an owner; and it is Declarant’s intention that each owner of a Dwelling Unit in any section of Sawmill Woods shall become a member of said community association and to be bound by its Articles of Incorporation and By-Laws;

NOW, THEREFORE, Declarant hereby declares that Sawmill Woods, Section III, as described in the Legal Description and Dedication to which this Declaration is attached (hereinafter referred to as the “Real Estate”) is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Dwelling Units situated therein.

ARTICLE I

Definitions

Section I. The following words and terms, when used herein or in any supplement or amendment thereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) “act” shall mean and refer to the Indiana Not-For-Profit Corporation Action of 1971, as amended;
- (b) “Applicable Date” shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) “Architectural Review Board: shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (d) “Articles” shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- (e) “Board” or “Board of Directors” shall mean and refer to the governing body of the Corporation elected, selected or appointed as pro-vided for in the Articles, By-Laws, and this Declaration;
- (f) “Building” shall mean and refer to a structure having more than one “Dwelling Unit.”;
- (g) “By-Laws” shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;
- (h) “Common Expenses” shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair, and replacement of the Common Properties, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs, and expenses declared by this Declaration to be Common Expenses;
- (i) “Common Properties” shall mean and refer to all of the Real Estate (including improvements thereto) except the individual Units as defined in subsection (i) below which will be sold to Unit Owners; and (ii) interior common walls between Dwelling Units, except for the outermost surfaces of the plasterboard of said walls; and (iii) items deemed Common Properties for the purposes of maintenance. Common Properties shall be maintained by the Corporation in accordance with Article VII-2 thereof. It is the intention of the Declarant to construct and Declarant’s sole expense a swimming pool upon the Common Properties when 75 Dwelling Units have been sold and closed and a Club House when 125 Dwelling Units have been sold and closed;

- (j) "Corporation" shall mean and refer to Sawmill Woods Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused to be incorporated under said name, its successors and assigns;
- (k) "Declarant" shall mean and refer to Sawmill Woods Development Corp., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, and any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
- (l) "Dwelling Unit" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designated and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit, as designated by Declarant by its deed of the same to another Person. For purposes of this Declaration, a "Dwelling Unit" shall be any single numbered parcel of land identified as a dwelling unit on a recorded subdivision plat of the Real Estate.
- (m) "Mortgages" shall mean and refer to the holder of recorded first mortgage lien on a Dwelling Unit;
- (n) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Dwelling Unit, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Dwelling Unit, but upon so acquiring title to any Dwelling Unit a mortgagee or tenant shall be an Owner;
- (o) "Parking Rights" Ownership of each Dwelling Unit shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Dwelling Unit as possible.
- (p) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (q) "Plat" shall mean and refer to the subdivision plat of the Real Estate recorded in the Office of the Recorder of Allen County, Indiana, as the same may be hereafter amended or supplemented.
- (r) "Real Estate" shall mean and refer to the parcel of real estate in Allen County, Indiana described in the Legal Description and Dedication to which the Declaration is attached;
- (s) "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens, and all other provisions set forth in this Declaration, as the same may be amended from time to time;

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

Declaration; Easement to Corporation; Encroachment Easement

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Dwelling Unit subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Dwelling Unit, or (ii) by the act of occupancy of any Dwelling Unit, shall accept such deed or execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Dwelling Units affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the Common Properties (including items deemed Common Properties for maintenance). Said easement shall permit the Board or its agents to enter onto any Dwelling Unit to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the subdivision and to enter onto any Dwelling Unit for the purpose of reconstruction and restoration in the event of casualty. Maintenance shall include but not be limited to maintenance of utilities which serve more than one Dwelling Unit and utilities owned and utilized by the Corporation.

Section 3. Encroachment Easements. If any portion of the Common Properties encroaches on any Dwelling Unit or any Dwelling Unit encroaches upon the Common Properties or another Dwelling Unit as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Corporation or to the Owner of the encroaching Dwelling Unit or Improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.

ARTICLE III

Dedications

Section 1. Streets and Easement. The streets and easements specifically shown or described on the Plat have been dedicated to public use for their usual and intended purposes, and such dedication is hereby ratified and confirmed.

ARTICLE IV

Corporation; Membership; Voting, Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Dwelling Unit shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any person who holds the Interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights;

- (a) Class A. Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each dwelling unit of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular dwelling unit, all such Persons shall be members of the Corporation, but all of such persons shall have only one (1) vote for such dwelling unit, which vote shall be exercised as they among themselves determine, but in no event shall be more than one (1) vote be cast with respect to any such dwelling unit.
- (b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B member shall be entitled to three (3) votes for each dwelling unit of which it is the Owner on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon the first to occur of (i) the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or (ii) July 1, 1987 (the applicable date being herein referred to as the "Applicable Date").

Section 3. Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, to maintain and repair the storm water detention system, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V

Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: James J. Lancia, Floyd A. Lancia, and William H. James, Jr. (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Dwelling Unit for any purpose (unless he is actually the Owner of a Dwelling Unit and thereby a member of the Corporation).

Section 3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, and any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The director so filling a vacancy

shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise be a vacancy.

Section 5. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case; his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the “Managing Agent”) upon such terms as the Board shall find in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) maintenance, repair, replacement, and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance), including the maintenance and repair of the storm water detention area;
- (b) snow removal from the streets, driveways, and parking areas shown on the Plat;
- (c) assessment and collection from the Owners of the Owners’ respective share of the Common Expenses;
- (d) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (e) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with deliver of the proposed annual budget for the current year;
- (f) keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

- (g) procuring and maintaining for the benefit of the Owners, the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (h) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (i) making available to Owners and Mortgagees, and to holders, insurers, or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the Subdivision and the books, records, and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances; and
- (j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties, provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after said date any such agreement shall be subject to termination by either party without cause and without payment of a termination fee upon ninety (90F) days written notice to the other party;
- (b) to purchase, lease, or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (d) to employ, designate, discharge, and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair, and replacement of the Common Properties;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) to promulgate, adopt, revise, amend, and alter from time to time such additional rules and regulations with respect to use, occupancy, operation, and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

Section 8. Limitations on Board Action.

- (a) After the Application Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.
 - (i) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
 - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
 - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (b) The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Owners (other than Declarant):
 - (i) by act or omission abandon, partition, subdivide, encumber, sell, or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);
 - (ii) by act or omission change, waive, or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walls, in the Common Properties or common fences, or the upkeep of lawns in the Subdivision;
 - (iii) fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

(iv) use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

Section 9. Compensation. No director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm, or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns, and legal representatives, made a party to any action, suit, or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit, or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or Deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors shall provide surety bonds and shall require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond

shall specifically include protections for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its Management Agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds

Section 13. Initial Management. The Initial Board has entered, or will hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than April 1, 1987, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term in which event the Corporation shall thereupon and thereafter resume performance of all its duties, obligations, and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

ARTICLE VI

Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Dwelling Unit, and on any improvements thereon, are to be separately assessed and taxed to each Dwelling Unit and shall be paid by the Owner of such Dwelling Unit. Any real estate taxes or other assessments against the Common Properties shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Dwelling Unit. Utilities including but not limited to water for lawn maintenance which are not separately metered to an Owner's Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 1. By Owners. Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefore arises, all interior maintenance, repairs, decoration, and replacement of his own Dwelling Unit. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Dwelling Unit,

except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Properties for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Dwelling Unit shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Dwelling Unit which, if neglected, might adversely affect any other Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing and related systems and components thereof including fixtures and appliances attached thereto, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit.

Dwelling Unit Owners shall also be responsible for water damage to a Dwelling Unit when the primary source of such problem is through negligence of the occupant of that Dwelling Unit.

Further, the Corporation shall be responsible for perpetual maintenance and repair of the storm water detention basin to be constructed by Declarant to serve all sections of Sawmill Woods, such construction to be in accordance with plans and specifications on file with the Water Pollution Control Engineering Department of the City of Fort Wayne, Indiana. Maintenance shall include but not be limited to cosmetic maintenance (including structural) to the basin from and after construction, including mowing, weed control, trash pickup, algae and mosquito control, and maintenance so as to avoid the basin's becoming an attractive nuisance for children. All maintenance will be done so as to assure that all storm runoff will be detained and that rate of runoff will not be increased after the improvements have been completed by the Declarant. Declarant by execution of this instrument hereby agrees that it shall construct the Project in accordance with the aforesaid plans and specifications, which include an approved fence around the basin for protection of children and patrons. The Corporation shall maintain the storm water detention basin in a condition acceptable to the City for so long as the detention basin exists. Should the Corporation fail to maintain or to make the appropriate repairs to the storm detention basin in a manner acceptable to the City of Fort Wayne within thirty (30) days after notification in writing by the City of Fort Wayne of the maintenance or repairs required, then the City of Fort Wayne shall have the right of entry over and upon any and all portions of Sawmill Woods for the purpose of repairing and maintaining the storm water detention basin. Also, in the event of an emergency situation as defined by the Board of Works of the City of Fort Wayne, and should a member of the Board or the Managing Agent of the Corporation not be able to be located readily, then in that case also the City of Fort Wayne shall have the right of entry and the right to make emergency repairs. At any time the City of Fort Wayne is required to enter and make repairs, the same shall be billed to the Corporation; and should the same not be paid within thirty (30) days, the City of Fort Wayne shall have the right to place a lien upon all Dwelling Units for costs incurred by it in the repair and maintenance of the storm water detention basin, including interest at the rate of fourteen per cent (14%) per annum and attorney fees. In addition, the corporation shall indemnify and hold harmless the City of Fort Wayne from any and all claims arising out of the installation or maintenance or use of the storm water detention basin. Further, the Corporation shall cause the City of Fort Wayne to be named as an additional insured on its liability insurance policy, and a copy of each insurance endorsement shall be furnished to the City. Minimum amounts of insurance shall be not

less than \$300,000 per person or \$500,000 per occurrence, and the insurer must give at least thirty (30) days' written notice to the City in order to cancel such insurance. All costs incurred by the terms of this paragraph shall constitute a part of the Common Expenses.

The Corporation, as part of its duties and as a part of the Common Expenses, shall provide maintenance, repairs, replacement and upkeep of the plumbing and related systems and components thereof which are located on Common Properties constituting service to more than one Dwelling Unit, including water damage to Common Properties or Dwelling Units other than the one which is the primary source of the problem, through negligence on the part of the occupant of such Dwelling Unit.

The Corporation shall also have the authority and duty to maintain plumbing and related systems and components thereof located within a Dwelling Unit to the extent that a malfunction or threat of same has originated outside the Dwelling Unit in which the malfunction occurs or may occur.

In addition to the maintenance of the Common Properties, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide maintenance, repairs, replacement, and upkeep of the exteriors of each Dwelling Unit. Such exteriors including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of the interior maintenance) and exterior walls shall be considered part of the Common Properties for maintenance only.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties as it deems necessary.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee, or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or items deemed as such for purposes of maintenance), or if maintenance, repairs, or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become part of the assessment to which such Owner's Dwelling Unit is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Dwelling Unit as may be required in connection with maintenance, repairs, or replacements of or to the Common Properties and others deemed as Common Properties for purposes of maintenance.

ARTICLE VIII

Architectural Control

Section 1. The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided to the By-Laws. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Real Estate and of improvements thereof in such manner as to reserve and enhance values and to maintain a harmonious relationship among structures, improvements, and the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Dwelling Unit or the improvements located thereon from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in the Declaration. No building, fence, all, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Dwelling Unit without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of the Dwelling Unit whether such construction occurs before or after the Applicable Date.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawing, specifications, and other items required to be submitted to it in accordance with such rules as it may adopt) has been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

ARTICLE IV (a)

Interior Common Walls

Section 1. Vertical Boundaries. The vertical boundaries of the Dwelling Units which abut an interior common wall shall be the vertical plain which includes the outermost surface of the plasterboard of said walls.

Section 2. Maintenance. Maintenance of the outermost surface of the plasterboard of all interior common walls shall be the responsibility of the Owner of the Welling Unit. The portion of the interior common wall which is designated as Common Property shall be maintained and repaired by the Corporation, as per Article VII-2 hereof.

ARTICLE IX (b)

Common Driveways

Section 1. Definition.

- (a) "Common Driveways" shall be the areas within the Ingress and Egress Easements as shown on the Plat.
- (b) "Affected Units" shall be the Dwelling Units encumbered by and/or served by a Common Driveway.

Section 2. Restrictions.

- (a) Common Driveways shall be used exclusively for the purpose of Ingress and Egress Easements.
- (b) No act shall be performed by any Owner or his tenants, guests, or agents which would in any manner affect or jeopardize the free and continuous use and enjoyment of any other Owner in or to the Common Driveway or an Affected Unit.
- (c) There shall be no parking within Common Driveways at any time except for delivery or emergency vehicles, unless the Board, by Resolution, determines otherwise upon petition of an Owner of an Affected.

Section 3. Damage or Destruction. In the event that any Common Driveway is damaged or destroyed (including by deterioration from ordinary wear and tear and lapse of time):

- (a) Through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Common Driveway without cost to the other Owners of Affected Units for that Driveway.
- (b) Other than by the act of an Owner or his agents, guests, or family, it shall be the obligation of all Owners of Affected Units for that Common Driveway to rebuild and repair such Common Driveway at their joint and equal expense.

Section 4. Maintenance Escrow.

- (a) For the purpose of meeting the cost of rebuilding and repairing a Common Driveway, each Affected Unit shall be subject to a maximum annual charge computed as follows: \$_____ multiplied by the number of square feet of

- paved areas within the pertinent Common Driveway divided by the number of Affected Units for that Common Driveway. This maximum annual charge may be raised by five percent each fiscal year by the Board of Directors.
- (b) The failure of any Owner to pay the annual charge within thirty (30) days of the start of each fiscal year shall result in a Restoration Assessment being levied against his Dwelling Unit.
 - (c) The Association shall hold the annual charge in escrow and shall maintain a separate accounting for the escrowed funds for each Common Driveway.
 - (d) The escrowed funds will be disbursed at the request of a majority of the Owners of the Affected Units served by a Common Driveway. If escrowed funds are not adequate to pay all costs of rebuilding and repair, all affected owners shall equally pay the excess costs.
 - (e) If the Owners of Affected Units do not perform all necessary rebuilding and repairs of any Common Driveway, the Association may do so as their agent, using the funds escrowed for that Common Driveway and such Restoration Assessments against the Affected Units as may be needed to cover the cost of the work.

ARTICLE X

Assessment

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments, and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for purposes of

maintenance), which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for maintenance) shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Allen County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver of release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: all Common Expenses except the cost of the master casualty insurance policy provided for in Article XII, Section 1 shall be divided by the number of Dwelling Units in the subdivision to determine quotient A; the cost of such master casualty insurance policy shall be divided on a pro rata basis for each Dwelling Unit based upon the square feet of living area in each Dwelling Unit including garages but excluding basements to determine quotient B; quotients A and B shall be added together for each Dwelling Unit and the sum shall be the Regular Assessment for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from

the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the actual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Dwelling Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys, or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statement to Owners for the same.

Each Owner shall prepay to the Corporation at the time his Dwelling Unit is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Dwelling Unit Owner's pro rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance as provided in Article XII, Section 1.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. As such time unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, pro-rated in equal shares (herein called (Special Assessment”); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provision, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstance described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

- (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance, and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner’s Dwelling Unit may be filed and foreclosed by the Board for an on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for an on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys’ fees) and interest from the date such Assessments were due, until paid, at a rate equal to the “prime interest rate” then being charged by Indiana

Bank and Trust Company of Fort Wayne in its largest and best corporate customers (or if said Bank is no longer in existence, then such rate charged by another nation bank in Allen county, Indiana selected by the Board).

- (b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installments which became due prior to such sale, transfer, or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Dwelling Unit from which it arose).

Section. 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable date, the Regular Assessments are and shall be established as follows:

- (a) From the date of the first conveyance of a Dwelling Unit by Declarant to any other Person until the earlier of the Applicable Date or December 31, 1985,
- (i) the Regular Assessment shall be Twenty-Five Dollars (\$25.00) per month on each Dwelling Unit owned by someone other than Declarant, pro-rated on a daily basis for any period of time less than one month (the amount required to fund the insurance escrow shall be in addition to the Regular Assessment), and
- (ii) the Regular Assessment shall be twenty-five percent (25%) of the amount of the Regular Assessment set forth in subparagraph (i) for each Dwelling Unit owned by Declarant until sixty (60) days after completion of a Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to the full amount set forth in subparagraph (i).

- (b) After December 31, 1985 (if the Applicable Date has not then occurred) and for each year thereafter until the Applicable Date, the Regular Assessment upon each Dwelling Unit may be increased by the Board by an amount not greater than an amount equal to the same percentage of the Regular Assessment provided under subparagraph (a) above as the percentage increase, if any, in the Consumer Price Index between the index figure for the month of July, 1983 and the index figure for the last month of the year preceding the year for which such increase is to be effective. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the Applicable Date. As used herein, "Consumer Price Index" means the "Consumer Price Index for All Urban Consumers, U.S. City Average of all items (CPI-U, reference base of 1967=111/)" published by the Bureau of Labor Statistics of the U. S. Department of Labor. If the publication of the Consumer Price Index of the U. S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such events; comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selection by the Corporation shall be substituted for said Consumer Price Index and used for making such computations.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date (whether before or after December 31, 1985), the Regular Assessment to be paid by Declarant for each Dwelling Unit owned by Declarant shall be twenty-five percent (25%) of the Regular Assessment for Owners other than Declarant until sixty (60) days after completion of a Dwelling Unit at which time the Regular Assessment for that Dwelling Unit shall be raised to one hundred percent (100%) of the Regular Assessment.

ARTICLE XI

Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, excluding all floor, ceiling and wall coverings and fixtures, betterments, and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on any Dwelling Unit or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a

Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchases by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Dwelling Unit resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and “all risk” coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the “insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen’s compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers’ and directors’ liability policies. Such insurance coverage shall also provide for

and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors, and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Dwelling Unit.

In no event shall any distribution of insurance proceeds for damage to Dwelling Units or Common Properties be made by the Board of Directors directly to an Owner where that is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits, or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XII

Casualty and Restoration; Condemnation; Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and

reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Building or Dwelling Unit so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building so damaged or destroyed to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Dwelling Unit which may be created as a result of such reconstruction or repair of any building shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Dwelling Unit such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

Section 2. Total or Partial Condemnation. In the event of the condemnation of all or any part of the Common Properties or all or any part of any Building, or Dwelling Unit, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties, buildings or Dwelling Units. For the purpose of such negotiation and/or contest of such award to the Board as to Buildings and Dwelling Units, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

Awards for the taking of all or part of a Building or Dwelling Unit shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed

arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

Section 3. Termination. In the event of condemnation of two-thirds (2/3) or more of the Dwelling Units in the subdivision, the remaining Owners may, by a majority vote terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the subdivision Plat and in Article XIII shall remain in full force and effect in accordance with the terms of the Plat and Article XVII of this Declaration.

ARTICLE XIII

Restrictions, Covenants, and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Dwelling Units shall be used exclusively for residential purposes for occupancy by a single family.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on the Common Properties, which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or place on the outside walls of any building; and no sign, awning, canopy, shutter, or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.

- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any outdoor area does not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.
- (f) No Dwelling Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience, or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers, or other equipment or machines or loud persons.
- (g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out of exposed on, or so as to be visible from any public street.
- (h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.
- (i) No "for sale", "for rent", or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant in the marketing, advertising, or sale of Dwelling Units as a part of the development of this subdivision.

- (j) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.
- (k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked, or stored anywhere within the Real Estate; provided however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.
- (l) Each Owner shall keep his Dwelling Unit in good order, condition, and repair and free of debris, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Dwelling Unit shall fail to so maintain his Dwelling Unit, the Corporation after notice to the owner and approval by two-thirds (2/3) vote of all Owners, shall have the right to enter said Dwelling Unit to correct, repair, maintain, and restore the Dwelling Unit. All costs incurred by the Corporation related to such correction, repair, maintenance, or restoration shall be and constitute a Special Assessment against such Dwelling Unit, payable by the Owner upon demand by the Corporation.
- (m) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash, and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.
- (n) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.
- (o) Easements for the installation and maintenance of utility and drainage facilities are reserved as shown on the recorded plat for the construction of poles, wires, and conduits, and the necessary or proper attachments in connection therewith for the transmission of utilities, telephone service, construction and maintenance of drains, sewers, pipe lines, gas, water, and heat and for any other public or quasi-public corporation engaged in supplying any one or more of the above utilities will have the right to enter upon said easements for any purpose for which said easements are reserved. All of said easements shall be kept free of permanent structures (except those installed by any such municipal, public or quasi-public corporation) and

removal of any obstructions by any such utility company shall in no way obligate the utility company to pay damages or to restore any such removed obstruction to its original form. All such obstructions, whether temporary or permanent, shall be subject to the paramount rights of any such utility company to construct, install, repair, maintain, or replace its utilities and/or sewer installations.

- (p) In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to all public utility companies, the proprietors of the land herein platted, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain, and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances subject, nevertheless, to all reasonable requirements of any body having jurisdiction thereof as to maintenance and repair of said streets.
- (q) Before any building or Dwelling Unit in the subdivision shall be used or occupied as a dwelling, or as otherwise provided by the subdivision restrictions above, the Declarant, or any subsequent owner of said Dwelling Unit shall install all improvements serving said Dwelling Unit as provided in said plans and specifications for this subdivision with the City of Fort Wayne Board of Works. Before any Dwelling Unit located within the subdivision may be used or occupied, such user or occupier shall first obtain from the Zoning Administrator the improvement location permit and certificate of occupancy required by the City of Fort Wayne Zoning Ordinance. This covenant shall run with the land and be enforceable by the City of Fort Way, State of Indiana, or by an aggrieved Dwelling Unit owner in the subdivision.
- (r) The further dividing of any Dwelling Unit or combination of Dwelling Units within this subdivision once it has been approved by the City of Fort Wayne Plan Commission is prohibited unless and until the City of Fort Wayne Plan Commission has reviewed and approved the change.
- (s) No Dwelling Unit shall be allowed on a Dwelling Unit Site unless its exterior dimensions are exactly uniform with the plat, thereby providing for a “zero” building setback requirement on all 4 sides; however, to permit the sale of Dwelling Unit Sites prior to construction of buildings and improvements thereon, each Dwelling Unit Site owner is granted a temporary easement over adjoining premises for purposes of placing his foundation and erecting a building which might exceed the exact exterior dimensions of the Dwelling Unit Site shown on the plat at the time of the conveyance to him. It is the intention to erect the buildings on the Dwelling Unit Site, but form slippage, etc. may result in minor deviations. After all of the buildings are erected upon each Dwelling Unit Site, Declarant shall have an “as-build” survey prepared and an amended plat shall be submitted to the City of Fort Wayne Plan Commission for approval, and upon approval shall be recorded in the Office of the Recorded of Allen County, Indiana. Said amended plat shall establish the correct and true dimensions of each Dwelling Unit Site, the common areas, and the exact location of all utility easements in the common

areas as installed; and each Dwelling Unit Site owner by acceptance and recordation of a deed hereby consents and grants a limited power of attorney to Declarant, or his successor or assigns to prepare, submit and record such amended plat and as their attorney-in-fact, to consent and ratify such an amended plat showing the “as-built” location of the buildings and utilities in the development.

- (t) By acceptance and recordation of a deed, each Dwelling Unit owner shall grant a license to Saw Mill Woods Community Association, Inc. to permit landscaping and other decorative devices to touch or attach to the exterior of the buildings erected on each of the Dwelling Unit Sites and access to the exterior of the buildings and roofs for maintenance and repair.
- (u) Each of the dwelling unit owners is granted a license to encroach upon adjoining property which is designation Common Area on the plat; for the purpose of locating or attaching to the sides of their buildings any necessary appurtenances for normal residential use, such as meters, electrical panels, vents, water service, air conditioning, or any device necessary to provide utility services to said residences.

Notwithstanding anything to the contrary contained herein, or in the Articles or By-Laws, including by not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable date, the right to use and maintain the Common Properties and any Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Dwelling Units or for the conduction of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices, and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

ARTICLE XIV

Amendment of Declaration

Section 1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner and shall, prior to becoming effective, be subject to the approval of the City of Fort Wayne Plan Commission:

- (a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

- (b) Resolution. A resolution to adopt a proposed amendment must be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved during the first twenty years by a vote of the Owners to which not less than ninety percent (90%) of the votes of the Corporation are allocated and thereafter by seventy-five percent (75%) of such Owners. The instrument of amendment must be signed by such Owners and recorded.
- (e) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Allen County, Indiana, and such amendment shall not become effective until so recorded.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute, and record any such amendments. The right of the Declarant to act pursuant to the rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

ARTICLE XV

Acceptance and Ratification

All present and future Owners, Mortgagees, tenants, and occupants of the Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time and interest or estate in a Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons who may own, occupy, use, enjoy, or control a Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XVI

Negligence

Each Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees, or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy, or abandonment of his Dwelling Unit or its appurtenances or of the Common Properties.

ARTICLE XVII

Benefit and Enforcement

This Declaration and the Restrictions shall run and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Allen County, Indiana and expiring thirty (30) years thereafter, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners of the Dwelling Units it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions, or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any Owner shall have the

right to enforce the covenants, conditions, and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions, and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel the enforcement thereof.

ARTICLE XIII

Annexations

No additional real estate may be annexed to the Real Estate by the Declarant or made subject to this Declaration of Covenants, Conditions, and Restrictions at any time.

ARTICLE XIX

FHA and VA Approval

As long as there is a Class B membership in the Corporation, amendments of this Declaration pursuant to Article XIV and annexation of additional real estate must receive the prior written approval of FHA and VA.

ARTICLE XX

Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto., as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Dwelling Unit.

Section 3. Severability Clause. The invalidity of any covenant, restriction, condition, limitation, or other provisions of this Declaration, the Articles or by the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

